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Attorney for Plaintiff, Betty Jo Middleton

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION**

Betty Jo Middleton,

Plaintiff,

v.

Kilolo Kijakazi, Acting
Commissioner of Social Security,

Defendant.

Case No. 1:22-cv-01240-SKO

**STIPULATION AND UNOPPOSED
MOTION FOR THE AWARD AND
PAYMENT OF ATTORNEY FEES
AND EXPENSES PURSUANT TO THE
EQUAL ACCESS TO JUSTICE ACT;
ORDER**

(Doc. 23)

IT IS HEREBY STIPULATED by and between the parties through their undersigned counsel, subject to the approval of the Court, that Plaintiff be awarded attorney fees and expenses in the amount of FOUR THOUSAND NINE HUNDRED FORTY-NINE DOLLARS AND 58/100 (\$4,949.58) under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d), and costs in the amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920. This amount represents compensation for all legal services rendered on behalf of Plaintiff by counsel in connection with this civil action, in accordance with 28 U.S.C. §§ 1920, 2412(d).

1 After the Court issues an order for EAJA fees to Plaintiff, the government will
2 consider the matter of Plaintiff's assignment of EAJA fees to counsel. Pursuant to
3 *Astrue v. Ratliff*, 560 U.S. 586, 598, 130 S.Ct. 2521, 177 L.Ed.2d 91 (2010), the ability
4 to honor the assignment will depend on whether the fees are subject to any offset
5 allowed under the United States Department of the Treasury's Offset Program. After
6 the order for EAJA fees is entered, the government will determine whether they are
7 subject to any offset.

8 Fees shall be made payable to Plaintiff, but if the Department of the Treasury
9 determines that Plaintiff does not owe a federal debt, then the government shall cause
10 the payment of fees, expenses and costs to be made directly to Counsel, pursuant to
11 the assignment executed by Plaintiff. Any payments made shall be delivered and
12 made payable to Plaintiff's counsel, Jonathan O. Peña.

13 Plaintiff's net worth did not exceed \$2,000,000.00 when this action was filed.

14 This stipulation constitutes a compromise settlement of Plaintiff's request for
15 EAJA attorney fees, and does not constitute an admission of liability on the part of
16 Defendant under the EAJA or otherwise. Payment of the agreed amount shall
17 constitute a complete release from, and bar to, any and all claims that Plaintiff and/or
18 Counsel including Counsel's firm may have relating to EAJA attorney fees in
19 connection with this action.

20 This award is without prejudice to the rights of Counsel and/or Counsel's firm
21 to seek Social Security Act attorney fees under 42 U.S.C. § 406(b), subject to the
22 savings clause provisions of the EAJA.

23 Respectfully submitted,

24
25 Dated: July 20, 2023

/s/ Jonathan O. Peña

26 JONATHAN O. PEÑA
27 Attorney for Plaintiff
28

1 Dated: July 20, 2023

PHILLIP A. TALBERT
United States Attorney
MATHEW W. PILE
Associate General Counsel
Office of Program Litigation
Social Security Administration

5 By: * Timothy A. Razel
6 Timothy A. Razel
7 Special Assistant U.S. Attorney
8 Attorneys for Defendant
9 (*Permission to use electronic signature
obtained via email on July 20, 2023).

10 **ORDER**

11 Based upon the parties' foregoing Stipulation and Unopposed Motion for the
12 Award and Payment of Equal Access to Justice Act Fees and Expenses (the
13 "Stipulation") (Doc. 23),
14

15 **IT IS ORDERED** that fees and expenses in the amount of FOUR THOUSAND
16 NINE HUNDRED FORTY-NINE DOLLARS AND 58/100 (\$4,949.58) as authorized
17 by the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412(d) and costs in the
18 amount of ZERO dollars (\$0.00) under 28 U.S.C. §1920, be awarded subject to the
19 terms of the Stipulation.
20
21

22
23 IT IS SO ORDERED.
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25 Dated: **July 21, 2023**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE